

(2012) 07 RAJ CK 0064
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1850 of 2001

Gaurav Bansal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 148

Citation : (2012) 209 TAXMAN 53

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Advocate : Anjay Kothari, for the Appellant; Arun Bhansali, for the Respondent

Final Decision : Dismissed

Judgement

Dinesh Maheshwari

1. The petitioners in these three writ petitions are the assesseees under the Income Tax Act, 1961 ("the Act of 1961"); and are closely related to each other inasmuch as the petitioners of CWP Nos. 1850/2001 and 1852/2001 are the sons of the petitioner of CWP No. 1851/2001. The identical nature grievance of the petitioners in these writ petitions is against rejection of the respective declaration made under the Voluntary Disclosure of Income Scheme, 1997 ("the Scheme"/"VDIS") for want of timely payment of the tax payable in respect of the voluntarily disclosed income; and against the consequent proceedings u/s 148 of the Act of 1961. Hence, these petitions, proceeding on similar nature facts and involving identical issues, have been considered together; and are taken up for disposal by this common order. In brief, the relevant facts and the background aspects of the matter are as follows: In the Finance Act, 1997 ("the Act of 1997"), the said disclosure Scheme, VDIS, was announced that was to remain in force until the 31st day of December 1997; and provided for voluntary disclosure of income and consequential recovery of tax from the concerned assessee. Sections 66 and 67 of the Act of 1997, particularly those relating to the time for

payment of tax under the Scheme, being relevant for the present purpose, could be taken note of as under:-

66. Time for payment of tax.- The tax payable under this Scheme in respect of the voluntarily disclosed income shall be paid by the declarant and the declaration shall be accompanied by proof of payment of such tax.

67. Interest payable by declarant.- (1) Notwithstanding anything contained in section 66, the declarant may file a declaration without paying the tax under that section and the declarant may file the declaration and the declarant may pay the tax within three months from the date of filing of the declaration with simple interest at the rate of two per cent. for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file the proof of such payment within the said period of three months.

(2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this Scheme.

2. Each of the petitioners, considering himself entitled to the benefit of the said Scheme, filed the requisite declaration before the Deputy Commissioner of Income Tax, Circle Jodhpur for the assessment years 1994-95, 1995-96 and 1996-97 on 30.12.1997; but each one of them deposited the tax payable for such declaration only on 31.03.1998. The petitioners were informed by the identical nature communications dated 28.05.1999 that the tax having not been deposited in connection with the VDIS declaration within prescribed time, the necessary certificate could not be issued. The contents of the said communication dated 28.05.1999 read as under:-

It has since been brought to the notice of your Authorised Representative that you have not deposited the tax in connection with VDIS declaration within prescribed time. Therefore, certificate cannot be issued. It is for your information.

3. It appears that aggrieved of the aforesaid communication dated 28.05.1999, the petitioners earlier approached this Court in the writ jurisdiction while seeking to question the constitutional validity of the provisions of the Act of 1997 relating to VDIS but the challenge was withdrawn with liberty to approach the Departmental Authorities and for raising grievances before them in the first place. It is borne out that the petitioners, thereafter, submitted the respective representations through their Authorised Representative before the respondent No. 2. It was, inter alia, contended in the representations that the deposit of tax with interest was not beyond the prescribed time and ought to have been accepted. In the alternative, it was also submitted that the Hon''ble Punjab & Haryana High Court in the case of Smt. Laxmi Mittal Vs. Commissioner of Income Tax, and the Hon''ble Madras High Court in the case of E. Prahalatha Babu, 18, 14th Street, Nandanam Extension, Nandanam, Chennai- 35 Vs. The

Commissioner of Income Tax Tamil Nadu IV, 121, Nungambakkam High Road, Chennai- 34, have held that the period of limitation for payment of tax under VDIS could not be treated as mandatory; and for the amount having been paid with explanation for a short delay of one (01) day, the declarant ought be given the benefit of the Scheme. It was yet further submitted in each case that the assessee was prevented by a reasonable cause in not depositing the tax on 30.03.1998 as the mother of the petitioner of CWP No. 1851/2001 (grand-mother of the other petitioners) was hospitalized at Agra in a critical condition and they had to rush to attend on her. It was, therefore, prayed that the delay of one day be condoned. The Commissioner of Income Tax, Jodhpur, however, proceeded to reject the representations so made with identical nature communications dated 27.11.2000, the contents whereof, from the file of CWP No. 1850/2001, are reproduced hereunder for ready reference:-

I am directed to refer to Shri S.P. Vyas, advocate, Jodhpur's letter received in this office on 18.8.2000 regarding reconsideration of condonation of delay under Voluntary Disclosure of Income Scheme, relying upon the following decisions:-

1. Hon"ble Punjab and Haryana High Court in the case of Smt. Laxmi Mittal Vs. Commissioner of Income Tax, .
2. Hon"ble Madras High Court in the case of E. Prahalatna Babu Vs. Commissioner of income tax, reported in (1999) 156 CTR (Mad.) 436

The above cases are not applicable in your case. Further, the application which was filed on 10.9.99 for reconsideration regarding issue of certificate, there was no mention of reasonable cause for not depositing the tax by the due date which is now being made as illness of Grand mother at Agra and that too alternatively. The photo copy of certificate is not legible and there is cutting in the name after the word "Kamla". It appears to be an after thought so as to cover the case by Hon"ble Punjab and Haryana High Court's decision, as referred to above.

VDIS is a self contained Scheme & there is no provision for condonation of delay in payment of tax irrespective of the fact whether reasonable cause for delay exists or not. Even the period of delay is immaterial. Therefore, considering the facts & circumstances of the case and in view of the Hon"ble Andhra Pradesh High Court's decision in the case of VYSHNAVI APPLIANCES (P) LTD. Vs. CENTRAL BOARD OF DIRECT TAXES and Another, your application for reconsideration is rejected. No interference is called for.

4. It appears that the petitioners attempted yet further representations but the same were rejected on 19/20.02.2001 with reference to the fact that similar representations had already been rejected. Thereafter, on 14.03.2001, the concerning Income Tax Officer proceeded to issue individual notices to the petitioners u/s 148 of the Act of 1961 seeking to re-assess the escaped income. Faced with such notices, the petitioners filed these writ petitions on 30.04.2001.

5. These writ petitions were simultaneously considered on 17.05.2001; and were

admitted with interim order while taking note of the contentions on behalf of the petitioners with the following order (as reproduced from the file of CWP No. 1850/2001):-

Learned Counsel for the petitioner contends that declaration made under the Voluntary Disclosure of Income Scheme (VDIS) accompanied with payment of tax though delayed by one day was a valid declaration and not liable to be rejected. In support of his contention, he has placed reliance on decision of two High Courts in Smt. Laxmi Mittal Vs. CIT [238-ITR-97] and Sardar Machhi Singh Vs. CIT & Anr. [245-ITR-58] and in view of that same cannot furnish relevant information for issuing notice u/s. 148.

Admit.

Issue notice.

Issue notice of stay application.

Rule is made returnable after eight weeks.

Meanwhile, further proceedings in pursuance of impugned notice u/s. 148 shall remain stayed.

Connect with C.W. No. 1851/2001 and C.W. No. 1852/2001.

5. Upon taking up of these matters for hearing, the Learned Counsel for the Department pointed out that though these petitions were filed with reference to some of the decisions of the High Courts taking a view that the short delay in payment of tax under VDIS could be condoned but then, the said decisions are no longer good law and stand over-ruled with the conclusive pronouncement of the Hon'ble Supreme Court in the case of Hemalatha Gargya Vs. Commissioner of income tax & Anr.: (2003) 259 ITR 01 wherein it has been held that the time schedule for payment of tax under VDIS is mandatory and cannot be extended; and there is no scope for any equitable consideration.

6. The Learned Counsel for the petitioners has, however, made the submissions that the rules of purposive interpretation ought to be employed and as the last date for making declaration under the Scheme was the 31st day of December 1997, the period for making payment of tax with interest ought also be read as three months from such last date for filing of the declaration. According to the Learned Counsel, looking to the nature of the Scheme, it could be reasonably inferred that the purpose of granting three months' time for payment of tax with interest had been to extend the Scheme for a period of three months so that a declarant may pay the tax with interest before the expiry of the financial year i.e., by 31st March 1998. According to the Learned Counsel, it would be discriminatory if the persons like the petitioners who had filed the voluntary declaration earlier are penalised by insisting on payment on an earlier date; and it would be rather arbitrary if the payment made by them on 31.03.1998 is not accepted. The Learned Counsel yet further contended that the payment of tax

with interest as made by the petitioners ought to be taken within the time prescribed under the Scheme in the following manner:-

- i. The petitioners filed the declaration under the Scheme on 30.12.1997.
- ii. The tax alongwith interest could have been paid within three months from the date of filing declaration.
- iii. The period of three months has to be computed step by step.
- iv. The first month from the date of declaration starts from 30.12.1997 and expires on 30.01.1998.
- v. The second month starts from 30.01.1998 and expires on 30.02.1998 but since there is no corresponding date in the month of February, the principle of corresponding date of the subsequent month for computing limitation fails and the same cannot be carried further. However, the date of expiry of second month cannot be left in vacuum and same, at worst, could be taken as 28.02.1998 or at best, 02.03.1998.
- vi. The period of one month still remains to be computed to determine the date of expiry of three months and since the principle of corresponding date has already failed, the period of third month would be from 01.03.1998 to 31.03.1998 in the worst situation taken for expiry of second month.
- vii. The petitioners have, thus, paid the tax alongwith interest within the time prescribed under the Scheme.

7. The Learned Counsel submitted in the alternative that even if the power to condone the delay is not vested with the Departmental Authorities, the sweep of the powers of this Court in extraordinary writ jurisdiction under Article 226 of the Constitution of India is wide enough and any order necessary to remedy the injustice could be passed. According to the Learned Counsel, the alleged delay of one day in paying the tax with interest in the present case being non-deliberate, bonafide, and supported by justifiable reasons, the cause of substantial justice deserves to be preferred and this unintentional delay deserves to be condoned.

8. After having given a thoughtful consideration to the entire matter, this Court is unable to agree on the submissions made on behalf of the petitioners, particularly in view of the dictum of the Hon''ble Supreme Court in Hemalatha Gargya's case (supra). In the opinion of this Court, the matter stands squarely covered thereby and all the arguments on behalf of the petitioners must fail.

9. In the case of Hemalatha Gargya (supra), the Hon''ble Supreme Court specifically considered the question as to whether the time for payment as fixed under the Scheme was extendable after noticing that there had been conflicting views expressed by different High Courts and by different Benches of the same High Court. The Hon''ble Supreme Court, inter alia, took note of the decisions in Smt. Laxmi Mittal and E. Prahalatna Babu, as relied upon by the petitioners; and so also the decision in Vyshnavi Appliances Private Limited as relied upon by the

Department in rejection of the representations. The submission as made by the Learned Counsel for the petitioners herein that it would be discriminatory if the person, who has submitted the declaration voluntarily earlier, is penalised by insisting on the payment of tax on an earlier date was also taken note of; and so also the submission that the Court could under certain circumstances dilute the severity of the provisions of Section 67 of the Act of 1997. The Hon''ble Supreme Court also took note of the contra submissions on behalf of the Revenue that under the Scheme, payment was envisaged to be made first and the declaration was to be filed thereafter; and only with a view to dilute the rigidity of this requirement that Section 67 allowed the assessee to make payment subsequent to declaration but subject to payment of interest @ 2% per month upto a period of three months and not further. The Hon''ble Supreme Court further took note of the contentions on behalf of the Revenue that as per the language used, the provisions contained in Section 67(2) were mandatory and no extension could be granted beyond the period of three months.

10. After thus taking note of the rival submissions in Hemalatha Gargya, the Hon''ble Supreme Court laid down the law in no uncertain terms that the provisions contained in the Scheme were mandatory in nature and there was no question of adopting and applying any equitable consideration. The Hon''ble Supreme Court, inter alia, held,-

We are of the view that the submissions of the Revenue must be accepted. A plain reading of the provisions of the Scheme would show that the tax payable under the Scheme "shall be paid" within the time specified is the general rule provided in section 66, namely, payment prior to the making of a declaration. The exception to this general rule has been carved out by section 67(1) which allows a declarant to file a declaration without paying the tax. This exception, however, is subject to two conditions, viz., (1) the payment of tax within three months from the date of the filing of the declaration together with, (2) the payment of simple interest at the rate of 2 per cent. for every month or part of a month. The period of interest is to commence from the date of filing the declaration and shall end with the date of payment of tax. It may be noted that u/s 67(1) not only must these two conditions be fulfilled within the period of three months but proof of such payment must also be filed within the same period.

The use of the word "shall" in a statute, ordinarily speaking, means that the statutory provision is mandatory. It is construed as such unless there is something in the context in which the word is used which would justify a departure from this meaning. There is nothing in the language of the provisions of the scheme which would justify such a departure. On the other hand, the provisions of section 67(2) make it abundantly clear that if the declarant fails to pay the tax within the period of three months as specified, the declaration filed shall be deemed never to have been made under the scheme. In the words, the consequences of non-compliance with the provisions of section 67(1) relating to the payment have been provided. It is well-settled that when consequences of

the failure to comply with the prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory (see AIR 1935 85 (Privy Council) .

Besides the scheme has conferred a benefit on those who had not disclosed their income earlier by affording them protection against the possible legal consequences of such non-disclosure under the provisions of the income tax Act. Where the assessee seeks to claim the benefit under the statutory scheme they are bound to comply strictly with the conditions under which the benefit is granted. There is no scope for the application of any equitable consideration when the statutory provisions of the scheme are stated in such plain language.

Seen from the angle of the Designated authority, which is created under the Scheme, it is clear that the authority cannot act beyond the provisions of the Scheme itself. The power to accept payment under the Scheme has been prescribed by the statute. There is no scope for the Revenue authorities to imply a provision not specifically provided for which would in any way modify the explicit terms of the Scheme.

11. It may be pointed out that one of the decisions as referred by the petitioners at the time of admission of these writ petitions had been in the case of *Sardar Machhi Singh Vs. Commissioner of Income Tax and Another*, and a copy of the order dated 17.07.2000 as passed in SLP No. 4220/2000 has been placed on record wherefrom it appears that the Hon'ble Supreme Court dismissed the SLP against the aforesaid decision of the Hon'ble Madhya Pradesh High Court in *Sardar Machhi Singh's* case. However, this aspect was also taken note of by the Hon'ble Supreme Court in *Hemalatha Gargya's* case while disapproving all the decisions holding that the time prescribed u/s 67 *ibid.* was not rigid; and the Hon'ble Supreme Court specifically pointed out that dismissal of SLP in limine would not operate as confirmation of reasoning of the decision in the following:-

In none of the decisions of the High Courts which have held that the time prescribed under Sec. 67(1) was not rigid has any legal basis been relied on, the decision to extend the time appears to have been arrived at on considerations of equity. This approach, in our opinion, was incorrect, as the court had no power to act beyond the terms of the Statutory Scheme under which benefits had been granted to the assessee. By so holding we make it clear we do not intend to reopen those decisions which have become final in favour of the assessee. It may also be noted that in one of such decisions, the Revenue had sought to prefer an appeal before this Court by way of a SLP which was dismissed in limine. It needs hardly to be stated that such dismissal would not operate as confirmation of the reasoning in the decision sought to be appealed against, nor does such dismissal by itself operate as an argument in favour of the assessee and against the Revenue.

12. In view of the authoritative pronouncement of the Hon'ble Apex Court in *Hemalatha Gargya's* case (*supra*), the contentions as urged on behalf of the

petitioners about condonation of delay or about any interpretation whereby the date of deposit under VDIS could be seen as available in their case upto 31.03.1998 deserve to be rejected.

13. The suggestion that what the authorities cannot do could yet be done by this Court in extraordinary writ jurisdiction has only been noted to be rejected. Issuance of any writ, order or direction under Article 226 of the Constitution of India fundamentally requires existence of a legal right and infringement thereof. There appears no legal right in the petitioners to make payment of the tax payable under VDIS beyond the statutory time; and no case of infringement of any legal right is made out if delay in deposit is not condoned. The authorities cannot be directed to act contrary to the law declared by the Hon"ble Supreme Court.

14. It may be noticed over again that the frame of VDIS has been such that per Section 66 *ibid.*, the declaration itself was required to be accompanied by the proof of payment of the tax payable in respect of the voluntarily disclosed income. Section 67 *ibid.* had given a latitude only to the extent that the declarant may file the declaration and then, pay the tax within three months from the date of filing of the declaration with simple interest @ 2% per every month or part thereof as comprised in the period beginning from the date of filing of the declaration and ending on the date of payment of tax. In fact, any date beyond the last day of the third month from the date of filing of the declaration cannot be considered available for making payment for the very specific and clear phraseology of Section 67 whereby even the proof of payment has to be supplied within the said period of three months. Then, in sub-section (2) of Section 67, the result of default in payment of tax before the expiry of three months from the date of filing of the declaration is also given that the declaration shall be deemed never to have been made. As expounded and explained by the Hon"ble Supreme Court in Hemalatha Gargya's case (*supra*), the provisions remain strict and mandatory with no scope for any leniency or modulation.

15. The submission as attempted by the Learned Counsel for the petitioners for counting the period of three months step by step and then, referring to the fact that the month of February had 28 days has a fundamental fallacy in it. It is the period of three months that is relevant for the purpose of Section 67 *ibid.* and not the number of days in such months. When the declaration was made on 30.12.1997, on a simple computation, the last day of the third month therefrom expired on 30.03.1998. The deposit as made on 31.03.1998, even if delayed by one day, cannot be taken as a valid deposit for the purpose of the Scheme. It may be pointed out that in the case of VYSHNAVI APPLIANCES (P) LTD. Vs. CENTRAL BOARD OF DIRECT TAXES and Another, as relied upon by the Revenue, similar had been the fact situation that the declaration was filed on 30.12.1997 but the declarant paid the tax on 31.03.1998. Therein, the Hon"ble Andhra Pradesh High Court did not agree with the proposition in Smt. Laxmi Mittal's case (*supra*) that the concerning provisions of Section 67 were to be construed

liberally; and found no legal ground to grant relief under Article 226 of the Constitution of India. Though in Vyshnavi Appliances the Hon''ble Court made an observation that the petitioner therein had not come forward with any explanation for delay but any such observation could only be considered redundant in view of the pronouncement of the Hon''ble Supreme Court in Hemalatha Gargya's case (supra). The relevance of the decision in Vyshnavi Appliances for the present case is that in relation to the exactly similar facts, of the date of filing of the declaration and date of payment of tax, the Court found the payment to be a belated one; and no legal basis to condone the delay. There appears absolutely no reason to take any view different.

16. Thus, in a cumulative effect of the above referred decisions in Hemalatha Gargya and Vyshnavi Appliances, all the submissions made on behalf of the petitioners can only be rejected. The payment as made by the petitioners on 31.03.1998 cannot be said to be a valid payment for the purpose of VDIS; and the authorities concerned cannot be faulted, whether in rejecting the representations made by the petitioners or in adopting the proceeding u/s 148 of the Act of 1961.

17. The Learned Counsel for the petitioners has made the submission in the last that if at all the contentions on validity of payment of tax under VDIS are not accepted, the authorities may be directed to proceed on the notice u/s 148 of the Act of 1961 with reference to the directions of the Hon''ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, It is also noticed that in Hemalatha Gargya's case (supra), the Hon''ble Supreme Court, even while holding that the assessee, who had not made timely payment of tax on the voluntarily disclosed income, would not be entitled to the benefit of the Scheme yet, directed the Revenue Authorities to refund or adjust the amount already deposited by the assessee concerned.

18. It goes without saying that the authorities are expected to apply the directions of the Hon''ble Supreme Court uniformly to all the similarly placed cases; and it cannot be assumed that the authorities concerned would not be proceeding in accordance with law. Of course, in the present matters, for the proceedings having hitherto remained stayed pursuant to the interim orders, the authorities concerned would now be expected to proceed expeditiously in accordance with law. Subject to the observations foregoing, these writ petitions stand dismissed but with no order as to costs. The interim orders stand vacated.